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No. 91-948

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

CHURCH OF THE LUKUMI BABALU AYE, INC. AND ERNESTO PICHARDO,

Petitioners,

vs.

CITY OF HIALEAH, FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF RESPONDENT

Richard G. Garrett*
Stuart H. Singer
Steven M. Goldsmith
Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Counsel for Respondent

*Counsel of Record

QUESTION PRESENTED FOR REVIEW

Whether the free exercise clause of the First Amendment invalidates the City of Hialeah's ordinances regulating the possession, slaughter, and sacrifice of animals?

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STATEMENT OF THE CASE AND FACTS

This litigation concerns the constitutionality of four ordinances adopted by the City of Hialeah in the summer and fall of 1987 on the subject of possessing, slaughtering and sacrificing animals within the City limits. Petitioners, The Church of the Lukumi Babalu Aye, Inc. and Ernesto Pichardo, one of the priests of the Church, brought this action in September 1987 for a declaratory judgment, injunctive relief and damages against the City, the City Council and Mayor.

The United States District Court for the Southern District of Florida (Spellman, J.), without a jury, conducted a seven day trial in July and August, 1989 on the issues of whether the City ordinances were invalid under the First Amendment or were preempted by state law.[1/] On October 5, 1989, the court rendered its twenty-one (21) page published decision affirming the constitutionality of the Hialeah ordinances in all respects. 723 F. Supp. at 1467-88.

Petitioners ignore the district court findings that three of the four ordinances primarily are zoning regulations that prohibit animal slaughter except in areas properly zoned for slaughterhouses. 723 F. Supp. at 1481. The district court found that Petitioners never sought any relief from these zoning ordinances, and that the constitutionality of the

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1/ The district court also considered whether the City, in violation of 42 U.S.C. § 1983, harassed and discriminated against Petitioners with respect to building permits and a variety of municipal services. The district court rejected these claims in their entirety after trial. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 723 F. Supp. 1467, 1488 (S.D. Fla. 1989). Petitioners did not appeal this ruling.

ordinances as applied to Petitioners were not at issue in the case. *Id.* at 1479.[2/]

Petitioners misrepresent several critical findings of the district court. The district court expressly found that the intent of the City in enacting the ordinances was "to stop animal sacrifice whatever individual, religion or cult it was practiced by," 723 F. Supp. at 1479, not "to interfere with religious beliefs." 723 F. Supp. at 1476. The district court determined that the ordinances were enacted for a permissible purpose: to bar "indiscriminate slaughter in areas of the City not zoned for such activities because of the attendant risk to both public health and animal welfare." 723 F. Supp. at 1488. The district court found, therefore, that the ordinances "have at most an effect on Plaintiffs' religious conduct that is incidental to the ordinances' secular purpose and effect." 723 F. Supp. at 1484. Petitioners misrepresent the record by suggesting that the evidence at trial established that animals are killed by the humane method prescribed by Florida and federal law. Instead, the district court expressly found that "the method of killing is unreliable and not humane." 723 F. Supp. at 1486.

Because the district court rendered its decision before the decision of this Court in *Employment Div., Dept. of Human Resources v. Smith,* 494 U.S. 872 (1990), the court examined and found that the ordinances were justified by compelling governmental interests which outweighed any incidental effect upon Petitioners' religious practices. 723 F. Supp. at 1483-87.

[2/] Petitioners, on July 12, 1989, just prior to trial, sought to slaughter animals in the Church. 723 F. Supp. at 1477 n. 43.

The United States Court of Appeals for the Eleventh Circuit, without dissent, entered a *per curiam* affirmance of the district court judgment on June 11, 1991. The Eleventh Circuit noted that the district court made extensive findings of fact, *see* 723 F. Supp. at 1469-1479, App. A2,[3/] which were not contested by Petitioners. The Eleventh Circuit affirmed the district court's conclusion that the ordinances passed by the City were not prohibited by the First Amendment. App. A2. Noting that the district court used an "arguably stricter standard" in determining whether the ordinances violated the United States Constitution than this Court did in *Smith,* 494 U.S. 872 (1990), the Eleventh Circuit determined it unnecessary to decide the effect of *Smith* on this case.[4/]

The fundamental question in this case is whether a municipality may, consistent with the First Amendment, enact regulations to prevent tens of thousands of chickens, goats, ducks, and other animals from being uncleanly held, inhumanely killed, and unsafely discarded throughout the homes and streets of an urban community. Although Petitioners' brief argues the point, the City has never denied

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[3/] References to the Appendix to the Petition for Certiorari are noted as "App." References to the Appendix attached to this Brief are noted as "App. Resp." References to the Record are noted as "R" followed by volume and page number.

[4/] The court did not adopt Part C(2) of the district court's opinion, which contained an additional justification for the ordinances: the psychological harm to children exposed to animal sacrifices. Because of the sufficiency of the rationale for the ordinances upheld by the Eleventh Circuit, Respondent has not briefed the psychological harm to children issue. Amicus, The Humane Society of Washington, has done so and this court could, if necessary, rely on that aspect of the district court's decision. *See Blum v. Bacon,* 457 U.S. 132, 137 n. 5 (1982).

that Santeria is a religion or that animal sacrifice is a part of at least certain practices of the Church. The district court properly focused the trial on the disputed issues: the manner in which animal sacrifices actually occur, the basis for proscribing such killings, and the legislative purpose and effect of the challenged laws. The district court's findings, supported by the record, comprehensively and correctly resolve these issues.

Santeria is a religion which is practiced in South Florida today by approximately 50,000 to 60,000 practitioners. 723 F. Supp. at 1470. An unspecified number of these practitioners practice animal sacrifice. *Id.* Most of the alleged religious activity takes place in the individual homes of family groups and there is no intermingling between these groups. *Id.* In fact, few practitioners of Santeria know other practitioners outside their own group. *Id.* Petitioners' beliefs are based on the interpretation of an oral tradition and there is no organized worship, centralized authority, written code or tradition. *Id.* at 1471 n. 9.

1. The Widespread and Uncontrolled Problem of Animal Sacrifice

Petitioners seek to overturn the City ordinances so as to permit animal sacrifices in homes throughout the entire community. R-9-216. Thus, the issue of animal sacrifice here is not of a few animals being mercifully dispatched in a church ceremony, but rather the specter of thousands, indeed tens of thousands, of animals[5/] being killed in homes and in the streets throughout South Florida with the

[5/] These animals include chickens, pigeons, doves, ducks, guinea fowl, goats, sheep, and turtles. 723 F. Supp. at 1471.

attendant problems of keeping and feeding the animals, and later, disposing of the remains. A single initiation rite involves sacrifice of between 20 and 30 animals. 723 F. Supp. at 1473 n. 22. As the district court observed, "that means that between 12,000 and 18,000 animals are sacrificed in initiation rites alone, during a one year period." *Id.* Most, but not all, of the animals are consumed. 723 F. Supp. at 1471.

2. Health Risks: Do We Need to Await a Plague?

The City proved and the district court found that the remains of the sacrificed animals create a health hazard because the remains attract flies, rats and other animals which serve as vectors of serious disease. 723 F. Supp. at 1474-75. Record evidence also established that the animal's blood is drained into pots and left for an indeterminate time, even months or years. 723 F. Supp. at 1473; R-10-379-380; R-9-278. One witness testified that his parents had practiced Santeria and, as a child, he had been offered blood to drink, but had refused. 723 F. Supp. at 1473, n. 21; R-14-1208-1214. Moreover, the viscera of animals eaten are discarded.

The City proved and the district court found that the remains of sacrificed animals are disposed in public places. R-10-379-390; R-11-658-59. The Church does not have any formal procedure for disposing of sacrificed animals. R-10-379. An expert for Petitioners, Dr. Wetli, testified that the disposition of animal remains after a sacrifice depends upon the ritual and how the practitioner interprets what the gods are telling him to do with the sacrificed remains. R-10-379. Because disposal of the remains of a sacrificed animal

is often made in accordance with the practitioner's interpretation of the wishes of his god, "[t]here is nothing consistent and nothing constant [in such disposal]." R-10-379. The Church is unable to monitor or control the way individual practitioners dispose of the sacrificed animals. 723 F. Supp. at 1471.

Consistent with this testimony, animal remains, along with items reflecting sacrifice, have been found in public places. 723 F. Supp. at 1474. Remains of sacrificed animals have been found at intersections, backyards, railroad tracks, homes, rivers, and by the sides of roads. R-10-377-378. Animal carcasses also have been found near rivers or canals, by stop signs, under palm trees, behind the Dade County Courthouse, and on people's lawns or on doorsteps. 723 F. Supp. at 1474, n. 29; R-14-1200; R-10-377. A goat, cut in half, was found at an intersection in Miami Beach. R-10-378.

There was also evidence that the remains of animals have been found strewn throughout homes and in backyards. A City of Miami Police Department identification technician testified that he responded to a call to a home where he found "several carcasses of dead animals, dead birds, a turtle, and goats and animal remains . . . in a line going from the living room into a kitchen area," R-12-765, and about 20 or 30 clay pots containing approximately 20-25 goat heads. R-12-766. In the backyard, he encountered dead birds, a dead turtle, and boxes of visceral material. R-12-766. Pichardo admitted that these things happen, but stated that the remains probably are from sacrifices of other religions or deviate practitioners of Santeria. 723 F. Supp. at 1474.

Uncontradicted evidence established that rats, flies and other animals attracted to the remains may themselves carry and exchange diseases, increasing the risk of spread of disease to humans. 723 F. Supp. at 1474-75. Areas where sacrificed animals are left can become a harborage for rats and fleas and the spread of disease to other animals and to humans is much more likely. *Id.* The potential diseases include dysentery, typhoid, cholera, salmonella, salmonosis, infectious hepatitis, yaws, trachoma, plague and many of the parasitic worms. 723 F. Supp. at 1475, n. 33, R-11-563. The district court found that the increased risk of disease and infestation and threat to the public health and welfare caused by indiscriminate animal slaughter was a compelling governmental interest. 723 F. Supp. at 1485-86.

3. The Inhumane Treatment of Animals Awaiting Sacrifice: Cages, Animal Farms, and Botanicas

Although animals may be obtained from many different sources, Petitioners purchase most sacrificed animals either from botanicas or from local farms that breed the animals specifically for sacrifice. 723 F. Supp. at 1474. Animals waiting for sacrifice are typically maintained in extremely overcrowded and filthy conditions. 723 F. Supp. at 1474; R-13-999-1011. In one botanica, a back room was filled with hundreds of pigeons, chickens, and goats crowded into cages so tightly that the animals could not even move. R-13-1010-1011. In botanicas, the animals are often not fed and watered in light of their sale for immediate sacrifice. 723 F. Supp. at 1474. The animals suffer intensely under these conditions. 723 F. Supp. at 1474. Unfortunately, monitoring and enforcement of animal

cruelty laws and regulations is ineffective. R-13-1014-1016; R-14-1207.

4. The Cruelty of Animal Sacrifice

The district court was faced with conflicting evidence on the humaneness of animal sacrifice methods. Pichardo testified that the priest punctures the neck of the animal with a knife, theoretically severing both of the main arteries and inducing unconsciousness and death. 723 F. Supp. at 1472. The City presented the expert testimony of Dr. Michael Fox, a recognized expert in veterinary medicine, who testified that the very method of killing described by Pichardo, a stabbing through the neck in hope of cleanly severing the carotid arteries, was unreliable in producing immediate death. R-12-880-881, 885-86. Dr. Fox testified that this method of killing would not consistently sever both carotid arteries. R-12-879. Dr. Fox explained at length the inherent unreliability of Petitioners' method of sacrifice and its cruel effect upon numerous types of sacrificed animals. R-12-881-890. Dr. Fox testified that an animal would remain conscious and perceive pain if both carotid arteries were not instantaneously and completely severed. R-12-890. There also was testimony that the heads of sacrificial birds are ripped from their bodies. R-14-1200; R-10-374.

The district court unequivocally resolved the conflict in the evidence regarding Petitioners' method of animal sacrifice against Petitioners. 723 F. Supp. at 1472-73. The district court found that Petitioners' method of killing is inhumane, unreliable and cruel. 723 F. Supp. at 1472-73. Dr. Fox' testimony was expressly found to be more credible than Petitioners' expert, *id.* at 1472-73, and the court concluded: "the method used in sacrificing the animals is

not humane, but in fact causes great fear and pain to the animal." 723 F. Supp. at 1473.

5. Passage of the Ordinances

The City addressed the problem of animal sacrifice by enacting a series of four ordinances. On June 9, 1987, the City adopted an emergency ordinance (No. 87-40) which simply adopted the language of Florida's state anti-cruelty statute, increased the penalty for a violation of the law and prohibited the slaughter of animals for food purposes, except in places where such activity is properly zoned and/or permitted under state and local law. *App. Resp.* at A1-3. On September 8, 1987, the City adopted an ordinance (No. 87-52) prohibiting the possession, slaughter or sacrifice of animals, except by licensed establishments where properly zoned. *App. Resp.* at A3-6. On September 22, 1987, the City adopted two further ordinances. Ordinance 87-72 prohibited the slaughtering of animals on premises which were not zoned for that purpose. *App. Resp.* at A10-13. Ordinance 87-71 restated that it was unlawful "for any persons, corporations or associations to sacrifice any animal" within the City. *App. Resp.* at A-11. Ordinance 87-71 also authorized registered groups to investigate animal cruelty complaints. *Id.*

SUMMARY OF ARGUMENT

This case is a facial challenge under the free exercise clause of the First Amendment to four municipal ordinances of the City of Hialeah, Florida. The standard for evaluating free exercise claims to such laws was clarified in *Employment Div., Dept. of Human Res. v. Smith*, 494 U.S.

872 (1990). In *Smith*, this Court held that where state laws are "neutral" and "generally applicable", the courts need not inquire whether there exists a "compelling" state interest for the law and normally need not adjudicate case-by-case claims for exemption from the regulation by religious groups. The Hialeah ordinances are such laws. It is incredulous that Petitioners would even contend that certain parts of the ordinances -- those which adopt state animal cruelty laws and those which require slaughter of animals to take place in areas zoned for slaughterhouses -- raise any question of neutrality or general applicability. The prohibition on possession of certain animals within the City limits is similarly unassailable. The ordinances' prohibition of animal sacrifice applies, as the district court found, to animal sacrifice whether practiced by individuals, religious groups, non-religious groups, or cults. Therefore, all aspects of the Hialeah Ordinances are neutral, generally applicable and constitutional under *Smith*.

Petitioners would have this Court ignore the neutrality of the ordinances on their face because the City does not ban all killing of animals. Hialeah need not ban cattle ranchers, hunters, and exterminators before it can lawfully ban the sacrifice or slaughter of thousands of animals in homes and streets throughout the City. Animal sacrifices create a host of social ills -- ranging from cruelty to animals to disease risks to humans -- which differentiate the problem. It is no more persuasive for Petitioners to argue that animals are abused in other ways which Hialeah does not regulate that it would have been for the Native Indians in *Smith* to submit that tobacco smoking is as harmful as the ingestion of peyote. If the laws are "neutral", this Court should not second-guess the legislative judgment.

Even if parts of the Hialeah Ordinances were not neutral towards religion, no remand would be required to determine whether they are nonetheless justified by "compelling" state interests and tailored to protect those interests. Because this case was tried before *Smith* was decided, the district court applied strict scrutiny, and even under that more stringent test, had no difficulty in sustaining the ordinances in all respects. Those findings were adopted by a unanimous court of appeals and are fully supported by the record.

Fundamentally, this case rests on the distinction between "belief" and "conduct." There is no question that laws may greatly burden religious "conduct." Mormons in Utah may not legally practice polygamy. *See Reynolds v. U.S.*, 98 U.S. 145 (1878). Fundamentalists in Tennessee may not handle snakes in Church. *See State v. Massey*, 229 N.C. 734, 51 S.E.2d 179, *appeal dism'd*, 336 U.S. 942 (1949). Orthodox Jews may not wear yarmulkes in the Armed Forces. *See Goldman v. Weinberger*, 475 U.S. 503 (1986). And, in Hialeah, practitioners of Santeria may believe whatever they wish but may not kill animals as an offering to their gods. To hold otherwise would, as this Court stated more than 100 years ago, "make the professed doctrines of religious belief superior to the laws of the land, and in effect to permit every citizen to become a law into himself." *Reynolds,* 98 U.S. at 166-67.

ARGUMENT

I. HIALEAH'S ORDINANCES ARE NEUTRAL, GENERALLY APPLICABLE LAWS AND THEREFORE DO NOT VIOLATE THE FIRST AMENDMENT

In *Employment Division v. Smith,* this Court held that a "neutral, generally applicable regulatory law" may be applied to religiously motivated conduct without compelling justification. 494 U.S. at 880. A law is "neutral" if it has a secular purpose that the State is free to regulate and neither advances nor inhibits religion. *Id.* at 887; *Jimmy Swaggart Ministries v. Board of Equalization,* 493 U.S. 378, 392 (1990). A law is "generally applicable" if it applies neutrally to all members of society. *Smith,* 494 U.S. at 879-81; *Jimmy Swaggart Ministries,* 493 U.S. at 391-92. The application of such a law may affect religious exercise without triggering stricter scrutiny of the law's purpose and fit. *Smith,* 494 U.S. at 878-881.

Petitioners argue that *Smith* "gives new emphasis" to the neutrality requirement. Respondents respectfully suggest that *Smith* worked no change in this regard. Laws which overtly prohibit religious belief or discriminate against a particular religion always have been invalid. *Smith* recognizes that laws of general application which burden religious conduct, but which are otherwise non-discriminatory, should not be subjected to the more exacting test commonly referred to as "strict scrutiny." Certainly, there is no language in the decision which purports to raise the hurdle which ordinances, such as those at issue here, must clear to be deemed "neutral". Indeed, counsel for Petitioners has espoused in other forums that this Court's

decision in *Smith* was fundamentally misguided because it "strips the free exercise clause" of meaning.[6/]

A. The Ordinances Are Neutral, Generally Applicable Laws Concerned With Animal Cruelty and Zoning

Hialeah's four ordinances are non-discriminatory, broadly applicable regulations which protect animals from cruel treatment and protect people from the health hazards attendant to the slaughter of large numbers of chickens, goats, and other animals. Whether viewed separately or together, the ordinances are not targeted at animal sacrifices for religious purposes, but all ritualistic killings of animals. This was the finding of the district court after an extensive trial. 723 F. Supp. at 184. Those findings were accepted unanimously by the court of appeals and are amply supported by the text of the ordinances themselves.

One of the ordinances, No. 87-40, adopted June 9, 1987, simply codifies verbatim Florida's animal cruelty law. Fla. Stat. § 828.01, *et seq.* (1986). The only change is an increase in penalty which the district court found was permissible and which is not challenged here. Certainly, a municipal ordinance which tracks a state statute speaking only to animal treatment and which does not even refer to ritualistic sacrifice is the epitome of neutral, broadly

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[6/] *See* Laycock, *The Supreme Court's Assault On Free Exercise, And The Amicus Brief That Was Never Filed,* 8 Journal of Law & Religion 99, 102 (1990) ("The Opinion appears to be inconsistent with the original intent, inconsistent with the constitutional text, inconsistent with doctrine under other constitutional clauses, and inconsistent with precedent. It strips the free exercise clause of independent meaning.")

applicable legislation which *Smith* essentially insulates from more exacting scrutiny under the free exercise clause.

Petitioners do not purport to challenge much of the state law -- and, thus, also much of Ordinance 87-40 -- but contend that the term "unnecessarily" as it modifies "kill" requires an impermissible theological determination whether animal killings are necessary for religious purposes. Of course, nothing in the ordinance calls for launching upon such an ecclesiastical expedition and there is no record support that Hialeah intends to do so. The Attorney General of Florida has opined that the ritual killing of an animal is not a "necessary" killing under state law. *Op. Fla. Att'y Gen.* 87-56, Annual Report at 146 (1987). No claim that the law was unconstitutionally vague was litigated below, nor presented in the Petition for Certiorari here. Accordingly, any refinements as to whether in a given case the taking of animal life is necessary should properly await refinement in the state courts as the statute is applied. *See, e.g., Rescue Army v. Municipal Court*, 331 U.S. 549, 574 (1947). *See also Wilkerson v. State,* 401 So.2d 1110, 1112 (Fla. 1981) (rejecting vagueness challenge to term "unnecessarily" in Florida's animal cruelty law).

The balance of the Hialeah ordinances properly are read as making clear that the exemptions for ritual slaughter under both state law and city ordinance 87-40 did not authorize the ritualistic sacrifice of animals or the slaughter of animals in locations not zoned for that purpose. Against all of these provisions, Petitioners argue that reference to the term "ritual" as well as "sacrifice" connotes inherently religious conduct, thus rendering the ordinances non-neutral.

The evidence at trial, however, established and district court found that animal "sacrifices" also occur in

secular "ritual[s] or ceremonies", 723 F. Supp. at 1484 & n.53, which are not constitutionally protected. Petitioners did not even attempt to argue that the ordinances would be unconstitutional if applied to sacrifices of animals for non-religious purposes. 723 F. Supp. at 1484, n. 53. Petitioners' own expert witness, Dr. Dathorne, testified that many animal sacrifices were the work of deviates from the Santeria faith or practitioners of witchcraft. R-9-299-300. Practitioners of voodoo and satanic "cults" also engage in animal sacrifice. *Id.*

Even if a ban on animal sacrifice primarily burdens those of a particular religious faith, that without more does not render the regulation non-neutral. Oregon's restrictions on peyote ingestion were neutral even though the law, in practice, was said to bear mostly upon the Native Indian religious groups challenging the restriction. *Smith,* 494 U.S. at 619 & n. 7 (Blackmun, J. dissenting). Certainly, legislators were aware that a law outlawing polygamy applied in practice mostly to the Mormons, who were acknowledged to be the primary, if not sole, practitioners of polygamy in Utah. *See Reynolds v. United States,* 98 U.S. at 164-66. The effect of the statute should not be the yardstick by which neutrality is measured.

The language of the ordinances should be definitive. The phrases "sacrifice", "ritual" or "ceremony" in ordinances 87-52 and 87-71 do not specifically target religion. The dictionary definition of ritual includes "a code or system of rites (as of a fraternal society)." *Webster's Third New International Dictionary*, at 1961 (1976). The primary definition of ceremony is "a formal act or series of acts typically conducted elaborately, solemnly, and as prescribed by the ritual or protocol of religious, state, courtly, social or tribal procedure." *Id.* at 366.

Thus, neither "ritual" nor "ceremony" is synonymous with religion, although each may include religious conduct. This Court has upheld a state law preventing polygamists from voting or holding public office, notwithstanding that polygamist was defined as a member of any "order" who advocates polygamy as either a "rite or ceremony of such order." *Davis v. Beason,* 133 U.S. 333 (1890). More recently, a federal district court has held that "ritual" is not synonymous with "religious" in discussing the meaning of the ritual slaughter exception in the Federal Humane Slaughter Act. *See Jones v. Butz,* 374 F. Supp. 1284, 1292-93 (S.D.N.Y. 1974), *aff'd,* 419 U.S. 806 (1974).

Furthermore, use of specific terms such as "sacrifice" and "ritual or ceremony" eliminate any confusion as to the intended reach of the ordinance. This serves the laudable purpose of placing residents of the City on notice of the prohibited conduct. The failure of the City to act clearly would invite vagueness challenges to the ordinances under the due process clause. *See, e.g., Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 497-99 (1982); *Smith v. Goguen,* 415 U.S. 566, 576 (1974).

With these definitions and principles in mind, the remaining three Hialeah ordinances are clearly neutral laws of general applicability. Ordinance 87-52 broadly states that "no person" shall "possess, sacrifice or slaughter" one of a list of enumerated farm animals intending to use such an animal for food purposes. Licensed establishments in areas zoned for slaughterhouses are excluded from the ban. Ord. 87-52, § 6-9(3). The killing, slaughter or sacrifice of an animal by "any group or individual" is proscribed, regardless of whether the flesh is to be consumed. Ord. 87-52, § 6-9(2). As the District Court found, "Ordinance 87-52 acts "as

a blanket and facially neutral prohibition on the killing of animals by anyone for any reason, except in slaughterhouses." 723 F. Supp. at 1484.

Ordinance 87-52 does not single out persons engaged in the religious sacrifice of animals but, instead, merely puts such persons on notice that the state exemption for ritual slaughter only applied to commercial ritual slaughter done in slaughterhouses. *Id.*

Petitioners finally claim that Ordinance 87-52 is unconstitutional because kosher slaughter is exempt from its prohibitions. The Hialeah ordinance does not exempt kosher slaughter, it exempts any ritual slaughter which comports with the Federal Humane Slaughter Act, 7 U.S.C. § 1901 *et seq.* (1992) and its Florida counterpart, Fla. Stat. § 828 (1992) *et seq.* Practitioners of Santeria and Judaism alike are free to slaughter animals in a ritualistic manner which comports with Federal law and local zoning regulations. Conversely, Hialeah's ordinances do not permit Jews to conduct kosher slaughter throughout the homes and streets of Hialeah.

Ordinance 87-72 deals only with slaughter, not sacrifice. The Ordinance makes it unlawful for any person, corporation or association to slaughter any animals within the city limits except on premises properly zoned as a slaughterhouse and meeting the requisite health, safety, and sanitation codes. Slaughter of animals by all persons whether for religious or secular reasons is equally regulated. If this provision is not neutral, then presumably Hialeah's entire zoning code would be considered discriminatory.

Petitioners challenge Ordinance 87-72 on preemption grounds. State preemption issues were not raised in the

court of appeals. Federal preemption issues were not raised in the complaint or tried in the district court. Neither state nor federal preemption claims were raised in the Petition for Certiorari. There is no reason for this Court to consider these issues.[7/]

Considered together, Ordinances 87-52 and Ordinance 87-72 are "first and foremost zoning ordinances". 723 F. Supp. at 1481. The City's zoning ordinances, like any other "neutral, generally applicable" regulatory law", may be

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[7/] Petitioners contend that Ordinance 87-72 is not applicable to their conduct because it defines "slaughter" to mean "a killing of animals for food". Although "sacrifice" and "slaughter" are defined differently, the definitions are not mutually exclusive. "Slaughter" is the "killing of animals for food", while "sacrifice" is the killing of animals "not for the primary purpose of food consumption." The "sacrifice" of an animal which is consumed also constitutes "slaughter." That the primary purpose of killing an animal which is eaten is not for food does not mean that an animal which is "sacrifice[d]" and eventually eaten is "not killed for food."

Petitioners argue that Ordinance 87-72 is preempted by Florida statutes regulating ritual slaughter. Ordinance 87-72 is primarily a zoning ordinance which does not regulate how ritual slaughter is performed, but rather where it may take place. 723 F. Supp. at 1480. Local communities may freely exercise their zoning powers to exclude slaughterhouses. *See, e.g., The Slaughterhouse Cases,* 16 Wall (83 U.S.) 36, 21 L.Ed. 394 (1873). Further, a Florida municipality is authorized to adopt an ordinance relating to animal control or cruelty unless it expressly conflicts with the provisions of Fla. Stat. Chapter 828. As the district court found, the penalty provisions of Ordinance 87-72 do not conflict with any penalty in Chapter 828.

applied constitutionally to religiously motivated conduct without compelling justification. *Smith,* 494 U.S. at 880.[8/]

Petitioners essentially ignore that two of the ordinances are primarily directed at zoning and do not argue that a municipality violates *Smith* by restricting conduct to a specific location in the municipality. Instead, relying upon *Islamic Center, Inc. v. City of Starkville,* 840 F.2d 293 (5th Cir. 1988), Petitioners argue that the zoning power may not be used to exclude their Church from "all accessible locations in the city." The City of Hialeah has not "zoned out" a church, it has at most zoned out slaughterhouses.[9/] More significantly, the exercise of the

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[8/] Two federal appellate courts since *Smith* have considered whether a zoning ordinance violated the First Amendment right to free exercise of religion. *See Cornerstone Bible Church v. City of Hastings,* 948 F.2d 464 (8th Cir. 1991); *St. Bartholomew's Church v. City of New York,* 914 F.2d 348 (2d Cir. 1990), *cert. denied,* 111 S.Ct. 1103 (1991) (New York Landmarks Preservation Law which eliminated church's option of raising revenues for purposes of expanding religious charitable activities did not violate First Amendment despite its "drastic" effect on church). In *Cornerstone Bible Church,* the church sued the city claiming that a zoning ordinance which excluded churches and other non-profit entities from the city's commercial and industrial zone violated the church's constitutional rights. 948 F.2d at 466-68. Finding that the ordinance was a general law that applied to all land-use in the city and had not been enforced for an anti-religious purpose, *id.* at 472, the Eighth Circuit held that the ordinance was a neutral law of general applicability under *Smith,* and affirmed an order granting summary judgment against the church. *Id.*

[9/] Moreover, even a church constitutionally may be precluded from, or restricted to, a particular area by a "neutral, generally applicable" zoning ordinance. *See, e.g., Cornerstone Bible Church,* 948 F.2d at 472. *See also Messiah Baptist Church v. City of Jefferson,* 859 F.2d 820, 825 (10th Cir. 1988), *cert. denied,* 490 U.S. 1005 (1989); *Lakewood, Ohio Congregation of Jehovah's Witnesses v. City of Lakewood,* 699 F.2d 303, 308-09 (6th Cir.),
(continued...)

zoning power as applied to Petitioner Church is not properly part of this case because, as recognized by the district court, the Church did not even seek zoning approval for a slaughterhouse use until immediately before trial.[10/]

Ordinance 87-71, unlike the primarily zoning ordinances referenced above, prohibits all animal "sacrifice" within the City. It does so even-handedly and while it burdens the ability of certain religions to practice animal sacrifice, it does not restrict religious belief. Nor does the ordinance discriminate among the cults, sects, religions or individuals who conduct sacrificial killings of animals. The district court expressly found that Ordinance 87-71 did not impermissibly target religious conduct, was "neutral", and "at most [had] an effect on Plaintiffs' religious conduct that is incidental to [its] . . . secular purpose and effect." 723 F. Supp. at 1484.

9/ (...continued)
cert. denied, 464 U.S. 815 (1983); *Grosz v. City of Miami Beach*, 721 F.2d 729, 738 (11th Cir. 1983), *cert. denied*, 469 U.S. 827 (1984).

10/ All citizens of Hialeah have the right to seek future land use plan amendments pursuant to Code. Hialeah City Code, § 32-5(a). Additionally, Petitioners may apply, if necessary, for a zoning change and/or variance which is not inconsistent with the future land use plan. *Id.*, at § 32-5(11)(c)(1). *See Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985) (claim that application of zoning regulations "took" property under Fifth Amendment premature because property owner had not obtained administrative decision).

B. Hialeah Need Not Prohibit All Killing Of Animals In Order To Constitutionally Proscribe Animal Sacrifice

Petitioners correctly assert that neither the State of Florida nor the City has enacted a generally applicable ban on the killing of animals. From this unassailable premise, however, Petitioners leap to a most illogical conclusion: that the City must either stop all animal killings or permit sacrifice of animals for religious reasons. This type of argument, essentially maintaining that the ordinances are underinclusive, is unpersuasive. In *Smith*, for example, the Court did not question Oregon's law against peyote use on the grounds that other activities, such as smoking tobacco or drinking alcohol, may also be hazardous to society.

Animal sacrifice is different from hunting, raising cattle, and exterminating bugs. The "killing of animals" is not a homogenous classification wherein all "killings" are similarly situated and must be outlawed or ritualistic killings permitted. The record evidence and findings by the district court demonstrate a host of evils specifically associated with animal sacrifices. 723 F. Supp. at 1471-76. The keeping, killing and disposal of animals in rituals or sacrifices pose health hazards and constitute cruel treatment of animals. These risks are not posed by other types of animal killings. The slaughter of animals in sanitary, regulated, zoned slaughterhouses is not constitutionally similar to the holding, killing and disposing of livestock and fowl by the thousands in homes throughout the community. For this reason, the ordinances are not religious "gerrymanders" which burden Petitioners' religious practice while ignoring constitutionally similar secular practices. *See Gillette v. United States*, 401 U.S. 437, 452 (1971) ("a claim alleging 'gerrymander' must

be able to show the absence of a neutral secular basis for the lines government has drawn").

Furthermore, Petitioners greatly overstate the extent to which other animal killing is legally permissible. Florida's animal cruelty law by its terms applies broadly to cruel and inhumane treatment of animals and has been specifically employed against cockfighting and training greyhounds with rabbits. *See* Op. Fla. Atty. Gen. 90-29 (1990).

To be sure, hunting, raising animals for food, and pest extermination are legally permitted in Florida as they undoubtedly are in every state in the Union. The reasons for permitting these activities which take animal lives are so self-evident as to require little if any description. Hunting and cultivation of animals for food is important to the propagation of the human species. The eradication of insects and pests is obviously justified both for protecting the food chain and controlling the spread of disease. Euthanasia, which must be administered in a painless fashion in regulated conditions, Fla. Stat. § 828.058 (Supp. 1992), prevents the running wild of exorbitant numbers of cats and dogs and other animals, which in turn makes sense in protecting the community from the health and safety problems inherent in large numbers of animals on the loose.

Even if the Court were of the view that certain lawful practices are cruel to animals -- the boiling alive of lobsters, perhaps -- there is no requirement that the City address all problems at the same time. *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955) ("Legislature may select one phase of one field and apply a remedy there, neglecting the others."); *Semler v. Oregon State Board of Dental Examiners*, 294 U.S. 608, 610 (1935). ("The state was

not bound to deal alike with all these classes, or to strike at all evils at the same time or in the same way.")

C. The Ordinances Were Not Intended to Discriminate Against Religious Belief

The district court specifically considered and rejected Petitioners' contention that the City intended to suppress Santeria. 723 F. Supp. at 1479. The district court stated:

> There was no evidence to support this contention. All the evidence established was that the council members' intent was to stop the practice of animal sacrifice in the City. Although this concern was prompted by the Church's public announcement that it intended to come out into the open and practice its religious rituals, including animal sacrifice, the council's intent was to stop animal sacrifice whatever individual, religion or cult it was practiced by.

723 F. Supp. at 1479 (emphasis added).

Petitioners ignore this language and instead seize upon and misconstrue two statements in the district court's twenty-one (21) page opinion as a finding that the ordinances are not religiously neutral. First, Petitioners argue that the lower court concluded that the ordinances were valid "even if the use of the words 'ritual' and 'ceremony' are understood as targeting primarily religious

conduct." 723 F. Supp. at 84. The district court expressly found, however, that use of the phrases "ritual or ceremony" did not impermissibly target religious conduct. *Id.*

Second, the district court did not state that government could target religion because "[s]trict religious "neutrality" is not required by the First Amendment." The lower court was referring to religious neutrality in the same sense as Justice O'Connor in *Wallace v. Jaffree,* 472 U.S. 38, 82-83 (1985) (concurring), and expressly cited her concurring opinion. 723 F. Supp. at 1484. The lower court, like Justice O'Connor, used religious *neutrality* to refer to the fact that government action often benefits or burdens religious exercise, and thus is not strictly neutral toward religion. This use of religious *neutrality* became the law of the land in *Smith.* Thus, the District Court's language should not be confused as a finding that the City intended that the ordinances discriminate against Santeria or, for that matter, against religion, a position that the lower court clearly and emphatically rejected. *See* 723 F. Supp. at 1484.

Discriminatory intent is not established by Petitioners quoting religiously intemperate remarks made at a city council meeting. Statements during debates or hearings which are made by persons who are not responsible for preparing or drafting the law are entitled to little weight regarding the intent of the legislation. *See, e.g., Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 204 & n. 24 (1975). *See also Renton v. Playtime Theaters, Inc.,* 475 U.S. 41, 48 (1986) ("[w]hat motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it . . . ."). Moreover, contrary to petitioners' assertion, the four ordinances in question were not even passed at this meeting.

In a free country, the privilege of expressing various views -- including views repugnant to the Constitution -- is enjoyed by all. One cannot, therefore, ascribe the sentiments expressed by members of the public or even individual councilmen to the City itself. *Washington v. Davis,* 426 U.S. 229, 249, 256 (1970). The best evidence of intent is the ordinances' text. *See West Virginia University Hospitals, Inc. v. Casey,* 111 S.Ct. 1138, 1147 (1990). Judicial speculation as to legislative motive should not be a basis for striking down an ordinance. *Lynch v. Donnelly,* 465 U.S. 668, 679-80 (1984); *Palmer v. Thompson,* 402 U.S. 217, 224-26, 229 (1971).

If extrinsic evidence of legislative intent were to be considered, there is evidence in the record which demonstrates that the City of Hialeah acted to regulate conduct, not to discriminate against Petitioners' religion. Richard Gross, the Hialeah assistant city attorney who drafted the ordinances (R-15-1337-38), testified regarding the nondiscriminatory reasons for enacting the ordinances. Gross specifically testified that the ordinances were drafted to regulate animal sacrifice, not to discriminate against Petitioners, because of the problems attendant with animal sacrifice. R-15-1357-58. Gross further testified that the City Council heard testimony about animal sacrifice not only in Hialeah, but throughout Dade and Broward Counties, Florida and the Southeastern United States. R-15-1356-57. In addition, one of the ordinances, No. 87-52, was taken from a model ordinance drafted by the Humane Society. R-10-479.

The ordinances are not unconstitutional because Petitioners' religiously-motivated practices brought animal sacrifice to the City Council's attention. Legislative action is not required to take place against a backdrop of

ignorance. For example, in *Reynolds v. United States*, 98 U.S. 145 (1878), the Court upheld the Anti-Bigamy Act of 1862, notwithstanding the fact that its prohibition against polygamy was prompted by the practices of the Mormon Church. A number of courts have sustained against First Amendment challenge provisions outlawing the handling of snakes in churches -- provisions which were adopted against a backdrop of fundamentalist snake-handling practices which were clearly religious in nature. *See State v. Massey*, 229 N.C. 534, 51 S.E.2d 179 (N.C.), *appeal dismissed, Brown v. North Carolina*, 336 U.S. 942 (1949) (legislative judgment upholding snake-handling on the grounds that it may endanger the life or health of any person); *Lawson v. Commonwealth*, 291 Ky. 437, 164 S.W.2d 972 (Ky. 1942). Obviously, a legislative body could not properly do its democratic duty without information about local practices. To require otherwise would force a legislative body to operate in a vacuum. Hialeah's action must be viewed as having been taken not because of the religious nature of much animal sacrifice, but despite that fact.

D. An Exemption For Religiously-motivated Animal Sacrifice Is Not Constitutionally Required

Petitioners further suggest the City's zoning ordinances are subject to stringent review under *Smith* and require a religious exemption because their effect on religion is "dominant". However, whether an ordinance is constitutional cannot depend upon the effect of the ordinances on Petitioners' religious conduct. In *Smith*, for example, Oregon's criminalization of the use of peyote under Petitioners' reasoning had a "dominant" effect on religious practice because its use was "central" to the Native

Indians' religion. *Smith*, 494 at U.S. 886-88. Indeed, Justice Blackmun in dissent noted that there may have been little trafficking and non-religious use of peyote other than by Native Indians. *Smith*, 494 U.S. at 916 & n. 7. Nevertheless, the Court in *Smith* directly rejected Petitioners' suggestion and held that the enforcement of a generally applicable prohibition of socially harmful conduct could not depend on the centrality of the conduct to the actor's religion. *Smith*, 494 U.S. at 885 & n. 2.

Relying upon the unemployment compensation cases beginning in *Sherbert v. Verner*, 374 U.S. 398 (1963), Petitioners suggest that *Smith* holds that religious motives must be included among legally permissible motives if the legality of a regulated act depends upon the actor's motives. The legality of animal "sacrifice" in Hialeah does not depend upon the actor's motives: its ordinances prohibit animal "sacrifice" by all persons regardless of motive. Moreover, the Court in *Smith* specifically rejected this argument in distinguishing *Sherbert* and its progeny of unemployment compensation decisions. The *Sherbert* balancing test was held to be limited to the unemployment compensation benefits cases in which it arose, and cases where other constitutionally protected rights were also implicated. *Smith*, 494 U.S. at 883-85. *Sherbert* is simply inapplicable to this case.

II. HIALEAH'S ORDINANCES ARE SUPPORTED BY COMPELLING GOVERNMENTAL INTERESTS

A. Regulating the Keeping, Killing and Disposal of Thousands of Animals Throughout the Streets and Homes of an Urban Community is a Compelling Governmental Interest

The significance of *Smith* is that a "neutral, generally applicable" law need not be justified by a compelling governmental interest, notwithstanding any "incidental" burden upon religious practice. *Smith*, 494 U.S. at 882-89. Inasmuch as Hialeah's ordinances in their totality satisfy this neutrality standard, no compelling state interests need be established to justify them. Nonetheless, even if such a showing were required because the ordinances were not strictly neutral, the City submits that demonstrable compelling interests abound.

Because the District Court rendered its decision before *Smith* was decided by the Court,[11/] it applied the compelling interest test that prevailed in the Eleventh Circuit and balanced the competing governmental and religious interests. 723 F. Supp. at 1487. *See Grosz v. City of Miami Beach, Florida*, 721 F.2d 729 (11th Cir. 1983), *cert. denied*, 469 U.S. 827 (1984). The district court found that the ordinances were justified by "[c]ompelling governmental interests, including public health and safety and animal welfare." 723 F. Supp. at 1486.

11/ The district court cited the first decision in *Smith*, 485 U.S. 660, 671 (1988), which remanded the case to the state court for clarification, but the district court rendered its decision before this Court's second decision in *Smith*.

The City has compelling governmental public health interests in regulating the possession, killing and disposal of thousands of animals. Moreover, the City also has a compelling interest to regulate against animal cruelty.

The district court properly held that the City has a compelling interest in prohibiting the slaughter or sacrifice of animals within areas of the City not zoned for slaughterhouse use. 723 F. Supp. at 1486. All local governments have broad power to zone and control land-use as an essential aspect of achieving a satisfactory quality of community life. *See Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 68 (1981). A local government may enact zoning ordinances pursuant to its inherent police power to regulate land-use, even if such zoning ordinances impact upon religious activity. *See, e.g., Cornerstone Bible Church*, 948 F.2d at 472; *St. Bartholomew's Church*, 914 F.2d at 355-56.

Under its inherent police power, the City had the right and duty to citizens throughout Hialeah to enact zoning ordinances which restricted all slaughter of animals to areas zoned for slaughterhouses. Certainly, the problems attendant to wide scale killing of animals render it conduct which properly may be subject to restrictive zoning. This Court has recognized that "it is both the right and the duty of the legislative body to prescribe and determine the localities where the business of slaughtering . . . may be conducted . . . it is indispensable that all persons who slaughter animals for food shall do it in those places and nowhere else." *The Slaughterhouse Cases*, 16 Wall. (83 U.S.) 36, 59 (1872).

The City's interest in zoning is particularly compelling in this case. Petitioners seek to sacrifice animals in their Church, private homes and residences wherever located throughout Hialeah. The uncontroverted evidence established that in South Florida practitioners of Petitioner's religion sacrifice a minimum of 12,000 to 18,000 animals a year in initiation rites alone. 723 F. Supp. at 1473 n. 22. These sacrifices result in public health issues that are subject to the inherent police power to isolate such killings from the rest of the community. Certainly, the City has a high interest in insuring the quality of life in Hialeah and regulating wide-scale animal sacrifice and disposal of animal remains in public places. *Cf. J & J Anderson, Inc. v. Town of Erie,* 767 F.2d 1469 (10th Cir. 1985) (recognizing "high" interest in protecting public health).

Although Petitioners suggest that their religious sacrifice of animals does not present the same problems as secular slaughter in slaughterhouses, they do not explain the alleged difference other than their religious motivation and the alleged smaller numbers of animals slaughtered. Neither the religious motivation nor the speculative discrepancy in the number of animals slaughtered renders the City's interest less than compelling. A zoning decision must be accorded considerable deference because it is a valid and necessary exercise of police power. *See Village of Belle Terre v. Boraas,* 416 U.S. 1, 4, 8 (1974).

Petitioners have suggested that their religious practice of sacrificing animals has been zoned out of the City because no existing provision of law permits a slaughterhouse within the City limits. This argument is nothing more than a thinly veiled appellate attack on the constitutionality of the City's zoning plan. It appears to be bottomed on the assertion, although not raised or litigated

below, that Petitioners were entitled to obtain, but were not granted, a variance from the existing zoning laws so as to permit animal sacrifices at a location within the City.

The record in this case precludes raising this claim for the first time on appeal. The District Court specifically noted that Petitioners had not pursued any constitutional claim applicable to this zoning issue. 723 F. Supp. at 1479. Although Petitioners filed an application for a zoning variance to conduct animal sacrifices at a church with the City, such application was not pursued and applicable administrative remedies were not exhausted.

B. Minimizing the Hazards to Public Health Associated with Animal Sacrifices Is a Compelling Governmental Interest

The activities of all individuals, even when religiously-motivated, are subject to regulation by the states in exercising their inherent police power to promote the health, safety, and general welfare. *See, e.g., Wisconsin v. Yoder,* 406 U.S. 205, 219-20 (1972). A state's interest in controlling disease to promote the health, safety and general welfare of its citizens is compelling. This Court has observed that the right to practice religion freely does not include liberty to expose the community or the child to communicable disease. In *Prince v. Commonwealth of Massachusetts,* 321 U.S. 158, 166-67 (1944), this Court found that a Jehovah Witness' religious interest in "street preaching" did not justify the health risk to children in disseminating magazines on the streets. Consistent with this principle, the inherent police power of the state has been held to permit the quarantining or destruction of cattle.

See, e.g., Johansson v. Board of Animal Health, 601 F. Supp. 1018 (D. Minn. 1985).

In *Conner v. Carlton,* 223 So.2d 324, 328 (Fla. 1969), *appeal dismissed for want of a substantial fed. ques.,* 396 U.S. 272 (1969), the Florida Supreme Court noted that the state legislature "found that brucellosis disease in domestic animals represents a dangerous subject of 'compelling public interest' sufficient to justify making an exception to the fundamental rule of due process." The state's interest in controlling disease and public and private health are compelling concerns which outweigh any religious conviction of its citizens. *See, e.g., Prince,* 321 U.S. at 166-67; *Smith,* 494 U.S. at 879 *(quoting Minersville School Dist. Bd. of Ed. v. Gobitis,* 310 U.S. 586, 594-95 (Frankfurter, J.) (1940)). Public health concerns are not simply "legitimate" state interests, they are "compelling".

The evidence established and the district court found that the disposal of animal carcasses in open public places and consumption of uninspected meat created a "real" risk of disease. 723 F. Supp. at 1485; R-11-593-594. A sacrificed animal's remains create a health hazard because the remains attract flies, rats and other animals, R-11-562, 566-67, which may themselves carry and exchange diseases and thus further increase the risk of disease to humans. 723 F. Supp. at 1474-75. Petitioners apparently concede that their animal sacrifices pose "incremental risk" of disease, but argue that the increased risk of disease is not compelling because the district court was not presented with any documented examples of infectious disease originating from a particular carcass or someone getting sick from eating a sacrificed animal. However, government must be permitted to prevent a foreseeable risk of disease before it occurs. "[D]iseases affecting the health of persons . . . do not

necessarily require a showing of their emergent or epidemic effects as a predicate compelling public interest for their summary eradication and control." *Connor v. Carlton,* 223 So.2d at 327.

The jurisprudence authorizing the use of the police power to thwart unacceptable societal risks is not dependent upon proof that the threatened harm has already produced the consequences sought to be avoided by the legislation. To the contrary, the cases recognize that such preventative legislation is appropriate despite evidence that the threatened danger has yet to produce the feared result. *See, e.g., Board of Educ. of Mountain Lakes v. Maas,* 56 N.J. Super. 245, 152 A.2d 394, 403 (N.J. App. 1959), *aff'd,* 31 N.J. 537, 158 A.2d 330 (1960) ("A local board of education need not await an epidemic, or even a single sickness or death, before it decides upon action to protect the public. To hold otherwise would be to destroy prevention as a means of combatting the spread of disease.") In *State ex rel Swann v. Pack,* 527 S.W. 2d 99 (Tenn. 1975), *cert. denied,* 424 U.S. 954 (1976), the court upheld an injunction against the handling of poison snakes as a central part of a religious service despite the testimony that no actual danger was posed.

In this case, the expert testimony at trial was that the health risk posed by Petitioners' animal sacrifices was "real".[12/] R-11-593-594. Mr. Livingstone, Environmental

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[12/] Despite this evidence of a "real" risk to health, Petitioners further suggest that the health risk created by their animal sacrifices must be minimal because there was no direct evidence of the number of sacrificed animals which were disposed of improperly. Petitioners' reliance upon the testimony of Ms. Zorida Diaz Albertini, Director of Animal Services for Dade County, to support this conclusion is misplaced. *Id.* Ms. Albertini's (continued...)

Administrator for the Dade County Department of Public Health, testified that:

> We're talking about proven situations from the literature from the Centers for Disease Control of diseases that I have referenced. They're common in humans all over the country, all over the world today. And it is not just a possibility, you can look through the Centers of Disease Control, go to Jackson Hospital, go to all of the major facilities and they can show you case after case after case of human beings infected by the various diseases that we're just talking about now, so it is not a possibility, it is a real thing.

Id.

The Dade County Department of Public Health receives numerous complaints about dead animals and similar things which pose a threat of spreading disease. Dade County has had many outbreaks of many types of disease from miscellaneous causes. R-11-551-52. Although the complaints received by the County Department of Public Health are not classified so as to determine if the source was animal sacrifice, R-11-552, the fact remains that dead animals pose a real threat of disease and Petitioners' animal sacrifices are a substantial source of the threat.

Petitioners' wrongly argue that the state pursues these interests only with respect to religious sacrifice. Local zoning regulations on where animals may be raised, kept and slaughtered apply across the board to secular and religious groups alike. There is no evidence, of record or otherwise, that hunting and fishing raises the public health concerns implicated by animal sacrifice. Petitioners also misconstrue the state statute requiring inspection of commonly sold meat, but exempting individuals who raise and consume their own food. Fla. Stat. § 585.88(1)(a) (1992). The state law only deals with inspection; all individuals must still comply with local zoning laws on where animals may be raised and where they may be slaughtered. Moreover, the state legislative judgment that inspection is not required for individuals who raise and consume their own meat has nothing to do with the public policy interests pursued by Hialeah in these ordinances.

Petitioners attack the City's ordinances on the grounds that they do not employ the "least restrictive means" to address compelling governmental interest. The district court considered and rejected Pichardo's testimony that the Church would follow any reasonable restriction on how the animals are obtained, maintained, sacrifices performed and carcasses disposed of. 723 F. Supp. at 1486. Even Pichardo does not know where practitioners of Santeria live and practice their religion, including how they dispose, at a minimum, 12,000 to 18,000 animal carcasses each year. 723 F. Supp. at 1486. The testimony established that Santeria

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12/(...continued)
agency only picks up dead animals which are found in a public right-of-way in Dade County. Thus, except for a goat which was cut in half and found at an intersection in Miami Beach, R-10-378, Ms. Albertini was not responsible for retrieving the remains of sacrificed animals found at railroad tracks, backyards, homes, rivers, palm trees, behind the Dade County Courthouse, and on lawns or on doorsteps. R-10-377-378, R-14-1200, R-10-377. Similarly, her agency was not responsible for retrieving the remains of sacrificed animals which practitioners of Santeria disposed at the base of trees. R-10-378. In summary, Ms. Albertini would not have record of many (if not most) of the animal sacrifices improperly disposed of by Petitioners.

practitioners often dispose of carcasses based upon their interpretation of the gods' desire. An ordinance regarding how animals are obtained, maintained, sacrificed and the carcasses disposed of, would be unworkable. 723 F. Supp. at 1486. Thus, there is no alternative to prohibition of animal sacrifices which will protect the public's compelling interest in preserving public health.

Even if such alternatives were workable, they necessarily would "enmesh government in religious affairs." *Jimmy Swaggart Ministries v. California Bd. of Equalization*, 493 U.S. at 395. Entanglement of city and church through "comprehensive measures of surveillance and contacts", *Lemon v. Kurtzman*, 403 U.S. 602, 621 (1971), is unconstitutional in its own right. *See also Hernandez v. C.I.R.*, 490 U.S. 680, 696-97 (1989); *Aguilar v. Felton*, 473 U.S. 402, 414 (1985).

Petitioners also claim that the ordinances are not properly tailored. Because animal "sacrifices" are not similar to other forms of permissible animal killings, the two free speech cases cited by Petitioners are factually distinct. In *Simon & Schuster, Inc. v. Members of New York Crime Victims Bd.*, 112 S.Ct. 501 (1991), this Court invalidated a content-based financial burden on free speech. The state had no greater interest in compensating crime victims from book royalties than from any of the criminal's other assets. In *Florida Star v. B.J.F.*, 491 U.S. 524 (1989), this Court struck down a law that forbade the mass media from publishing the names of rape victims, but did not outlaw other manners of disseminating the same information. *Florida Star*, 491 U.S. at 540. There is no argument here that the ordinances fail to effectuate the purposes for which they were adopted.

C. Prevention of Animal Cruelty Is A Compelling Governmental Interest

The district court correctly found that the City had a compelling interest in protecting animals from the cruelty of animal sacrifice. 723 F. Supp. at 1486. As the district court noted in *Humane Society of Rochester v. Lyng*, 633 F. Supp. 480, 486 (W.D.N.Y. 1986), "it has long been the public policy of this country to avoid unnecessary cruelty to animals." "[L]egislation which has for its purpose the protection of animals from harassment and ill-treatment is a valid exercise of the police power." *C.E. America, Inc. v. Antinori*, 210 So.2d 443, 444 (Fla. 1968). Because "[c]ruelty to animals is an offense 'against public morals, which the commission of cruel and barbarous acts tends to corrupt,'" state anti-cruelty "statutes are 'directed against acts which may be thought to have a tendency to dull humanitarian feelings and to corrupt the morals of those who observe or have knowledge of those acts.'" *Animal Legal Defense Fund Boston, Inc. v. Provimi Veal Corp.*, 626 F. Supp. 278, 280 (D. Mass. 1986) (citations omitted), *aff'd*, 802 F.2d 440 (1st Cir. 1986).

These cases evidence our nation's present public policy against animal cruelty and the developing law against conduct which is cruel to animals. Congress has recognized animal rights and has established a clear federal policy in favor of the humane treatment of animals by enacting numerous statutes which recognize and protect animal rights. *See, e.g.*, Animal Welfare Act, 7 U.S.C. §§ 2131-2157 (1988); The Humane Methods of Livestock Slaughter Act, 7 U.S.C. §§ 1901-1906 (1988); and Marine Mammals Protection Act, 16 U.S.C. §1361-1407 (1988). Every state and territory, as well as the District of Columbia, has

enacted some form of statute extending protection to animals.[13/] *See* E. Leavitt, *Animals and Their Legal Rights,* 13-14 (1978). Congress and all state legislatures, therefore, have recognized by their statutes that society has a compelling interest in protecting animals.

Petitioners argue that preventing cruelty to animals is not a compelling interest because state and local authorities tacitly permit practices that may inflict greater and longer-lasting pain on animals. Petitioners fail to cite record evidence to support this assertion. Indeed, many of these alleged practices are regulated by various governmental agencies. *See, e.g.,* 9 C.F.R. § 313 (1987) (federal humane slaughter regulations); Fla. Stat. § 372.001, *et seq.* (1992) (Florida hunting laws). Animal "sacrifice" presents three dimensions of cruelty. The district court found cruel the: (1) method of killing; (2) keeping of animals before sacrifice in filthy, overcrowded conditions without food and water; and (3) perception of both pain and fear during the actual sacrificial ceremony. 723 F. Supp. at 1486-87. Therefore, that the City did not prohibit all animal "killings" does not indicate that Petitioners' sacrifices are not cruel. The three components of animal cruelty identified by the district court are not so similar, let alone identical, to any of the secular contexts identified by Petitioners that the prohibition on animal "sacrifices" also mandates a prohibition on all animal "killings".

13/ State legislatures have further enhanced the public policy of protecting animals by granting to private humane societies varying measures of police powers to enforce the anti-cruelty laws. *See, e.g.,* California Corporation Code § 10404 (West 1977) (power to investigate and collect evidence to assist prosecutorial efforts); Florida Statutes §§ 828.03 and 828.073 (1990) (seizure of abused animals, with or without a warrant).

Petitioners complain that no legislature has applied Dr. Fox' "standards" to Kosher slaughterhouses. Dr. Fox did not set forth any "standards" as to how animals should be killed. Instead, Dr. Fox explained why Petitioners' method of sacrifice was neither reliable nor humane. Dr. Fox specifically distinguished the Kosher and Moslem method of slaughter, by which the animal's neck is completely severed, from the method of sacrifice used by Petitioners, by which the animal's neck is jabbed and poked, and found the Kosher and Moslem methods to be more reliable and humane. R-12-887. The evidence established and district court implicitly found that the Petitioners' sacrifices did not satisfy federal and Florida statutes on humane ritual animal slaughter. 723 F. Supp. at 1486. *See also* 7 U.S.C. § 1902(b) (1988); Fla. Stat. § 828.23(7)(b) (1992). These federal and state provisions apply equally to all religious groups who would engage in ritual slaughter.

Petitioners claim that the City's compelling interest only is to protect animals from cruelty in those cases where the priest does not sever all arteries simultaneously. This argument ignores the cruel and inhumane conditions which the district court expressly found precede the final sacrifice. 723 F. Supp. at 1472-73. Petitioners did not present evidence to rebut these findings and their argument that no government agency attempts to prevent these problems in secular contexts is not established by the record.

Finally, Petitioners callously state that "[a]ll living things must die" and suggest that the amount of cruelty to animals in the process of dying does not justify any protection. The district court specifically found, however, that Petitioners' cruelty to the animals begins long before actual sacrifice. 723 F. Supp. at 1473-74. The duration of Petitioners' animal cruelty is far longer than the "brief

period of consciousness in those cases in which the priest fails to sever all arteries simultaneously . . . ." The problem begins with the holding of animals in crowded filthy botanicas, and only culminates with a painful, fearful death.

The inherent cruelty of animal sacrifice cannot be remedied by less restrictive means. Even Pichardo did not know how many people practiced Santeria in the City, where such practitioners resided, how they obtained the animals which were sacrificed, or how the practitioners disposed of the carcasses. 723 F. Supp. at 1486 & n.58. The City could not enforce less restrictive ordinances which permitted but regulated animal sacrifices without locating members of the Santeria Church, constantly monitoring their activities and closely administrating the ordinances. Clearly, this would constitute an excessive entanglement with religion and would be unconstitutional. *See, e.g., Hernandez,* 490 U.S. at 696-97; *Aguilar,* 473 U.S. at 414.

The City of Hialeah had far more than an "undifferentiated view or apprehension" of the harms created by community-wide animal sacrifices. *Compare Tinker v. Des Moines Independent Community School District,* 393 U.S. 503, 508 (1969), *with* 723 F. Supp. at 1469-79. The City did not speculate regarding the harms that occur because of community-wide animal sacrifice based upon assumptions. Instead, the City introduced a wealth of evidence regarding the harms to these interests created by wide-scale animal sacrifice throughout the community. 723 F. Supp. at 1469-79.

CONCLUSION

For the reasons set forth above, the judgment of the United States Court of Appeals for the Eleventh Circuit should be affirmed.

Respectfully submitted,

Richard G. Garrett*
Stuart H. Singer
Steven M. Goldsmith
GREENBERG, TRAURIG,
HOFFMAN, LIPOFF,
ROSEN & QUENTEL, P.A.
Attorneys for Respondent
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500

*Counsel of Record

July 31, 1992

APPENDIX

APPENDIX

ORDINANCE NO. 87-40

EMERGENCY ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, ADOPTING FLORIDA STATUTE, CHAPTER 828 "CRUELTY TO ANIMALS" (COPY ATTACHED HERETO AND MADE A PART HEREOF), IN ITS ENTIRETY (RELATING TO ANIMAL CONTROL OR CRUELTY TO ANIMALS), EXCEPT AS TO PENALTY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTY FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the citizens of the City Or Hialeah, Florida, have expressed great concern over the potential for animal sacrifices being conducted in the City of Hialeah; and

WHEREAS, Section 828.27, Florida Statutes, provides that "nothing contained in this section shall prevent any county or municipality from enacting any ordinance relating to animal control or cruelty to animals which is identical to the provisions of this Chapter...except as to penalty."

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

Section 1. The Mayor and City Council of the City of Hialeah, Florida, hereby adopt Florida Statute, Chapter 828 - "Cruelty To Animals" (copy attached hereto and made a part hereof), in its entirety (relating to animal control or cruelty to animals), except as to penalty.

Section 2. Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3. Penalties.

Any person, firm or corporation convicted of violating the provisions of this ordinance shall be punished by a fine, not exceeding $500.00, or by a jail sentence, not exceeding sixty (60) days, or both, in the discretion of the Court.

Section 4. Inclusion in Code.

The provisions of this Ordinance shall be included and incorporated in the Code of Hialeah, as an addition or amendment thereto, and the sections of this Ordinance shall be re-numbered to conform to the uniform numbering system of the Code.

Section 5. Severability Clause.

If any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent

jurisdiction, such invalidity or unconstitutionality shall not effect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6. Effective Date.

This Ordinance shall become effective when passed by the City Council of the City of Hialeah and signed by the Mayor of the City of Hialeah.

PASSED and ADOPTED this 9th day of June, 1987.

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ORDINANCE NO. 87-52

ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF ORDINANCES OF THE CITY OF HIALEAH, FLORIDA, BY ADDING THERETO TWO (2) NEW SECTIONS TO BE NUMBERED SECTION 6-8 "DEFINITIONS" AND 6-9 "PROHIBITION AGAINST POSSESSION OF ANIMALS FOR SLAUGHTER OR SACRIFICE"; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, PROVIDING PENALTY FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the residents and citizens of the City of Hialeah, Florida, have expressed great concern regarding the possibility of public ritualistic animal sacrifices within the City of Hialeah, Florida; and

WHEREAS, the City of Hialeah, Florida, has received an opinion from the Attorney General of the State of Florida, concluding that public ritualistic animal sacrifice, other than for the primary purpose of food consumption, is a violation of state law; and

WHEREAS, the City of Hialeah, Florida, has enacted an ordinance (Ordinance No. 87-40), mirroring the state law prohibiting cruelty to animals.

WHEREAS, the City of Hialeah, Florida, now wishes to specifically prohibit the possession of animals for slaughter or sacrifice within the City of Hialeah, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

Section 1. Chapter 6 of the Code of Ordinances of the City of Hialeah, Florida, is hereby amended by adding thereto two (2) new Sections 6-8 "Definitions" and 6-9 "Prohibition Against Possession Of Animals For Slaughter Or Sacrifice", which is to read as follows:

Section 6-8. Definitions

1. Animal - any living dumb creature.

2. Sacrifice - to unnecessarily kill, torment, torture, or mutilate an animal in a public or private

ritual or ceremony not for the primary purpose of food consumption.

3. Slaughter - the killing of animals for food.

Section 6-9. Prohibition Against Possession Of Animals For Slaughter Or Sacrifice.

1. No person shall own, keep or otherwise possess, sacrifice, or slaughter any sheep, goat, pig, cow or the young of such species, poultry, rabbit, dog, cat, or any other animal, intending to use such animal for food purposes.

2. This section is applicable to any group or individual that kills, slaughters or sacrifices animals for any type of ritual, regardless of whether or not the flesh or blood of the animal is to be consumed.

3. Nothing in this ordinance is to be interpreted as prohibiting any licensed establishment from slaughtering for food purposes any animals which are specifically raised for food purposes where such activity is properly zoned and/or permitted under state and local law and under rules promulgated by the Florida Department of Agriculture.

Section 2. Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3. Penalties.

Any person, firm or corporation convicted of violating the provisions of this ordinance shall be punished by a fine, not exceeding $500.00, or by a jail sentence, not exceeding sixty (60) days, or both, in the discretion of the Court.

Section 4. Inclusion in Code.

The provisions of this Ordinance shall be included and incorporated in the Code of the City of Hialeah, as an addition or amendment thereto, and the sections of this Ordinance shall be re-numbered to conform to the uniform numbering system of the Code.

Section 5. Severability Clause.

If any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not effect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6. Effective Date.

This Ordinance shall become effective when passed by the City Council of the City of Hialeah and signed by the Mayor of the City of Hialeah.

PASSED and ADOPTED this 8th day of September, 1987.

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ORDINANCE NO. 87-71

ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, PROHIBITING THE SACRIFICING OF ANIMALS UPON ANY PREMISES IN THE CITY OF HIALEAH, FLORIDA; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, PROVIDING PENALTY FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Hialeah, Florida, has determined that the sacrificing of animals within the city limits is contrary to the public health, safety, welfare and morals of the community; and

WHEREAS, the City Council of the City of Hialeah, Florida, desires to have qualified societies or corporations organized under the laws of the State of Florida, to be authorized to investigate and prosecute any violation(s) of the ordinance herein after set forth, and for the registration of the agents of said societies.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

Section 1. For the purpose of this ordinance, the word sacrifice shall mean: to unnecessarily kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption.

Section 2. For the purpose of this ordinance, the word animal shall mean: any living dumb creature.

Section 3. It shall be unlawful for any person, persons, corporations or associations to sacrifice any animal within the corporate limits of the City of Hialeah, Florida.

Section 4. All societies or associations for the prevention of cruelty to animals organized under the laws of the State of Florida, seeking to register with the City of Hialeah for purposes of investigating and assisting in the prosecution of violations and provisions of this Ordinance, shall apply to the City Council for authorization to so register and shall be registered with the Office of the Mayor of the City of Hialeah, Florida, following approval by the City Council at a public hearing in accordance with rules and regulations (i.e., criteria) established by the City Council by resolution, and shall thereafter, be empowered to assist in the prosecution of any violations of this Ordinance.

Section 5. Any society or association for the prevention of cruelty to animals registered with the Mayor of the City of Hialeah, Florida, in accordance with the provisions of Section 4 hereinabove, may appoint agents for the purposes of investigating and assisting in the prosecution of violations and provisions of this Ordinance, or any other laws of the City of Hialeah, Florida, for the purpose of protecting animals and preventing any act prohibited hereunder.

Section 6. Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 7. Penalties.

Any person, firm or corporation convicted of violating the provisions of this ordinance shall be punished by a fine, not exceeding $500.00, or by a jail sentence, not exceeding sixty (60) days, or both, in the discretion of the Court.

Section 8. Inclusion in Code.

The provisions of this Ordinance shall be included and incorporated in the Code of the City of Hialeah, as an addition or amendment thereto, and the sections of this Ordinance shall be re-numbered to conform to the uniform numbering system of the Code.

Section 9. Severability Clause.

If any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not effect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance.

Section 10. This Ordinance shall become effective when passed by the City Council of the City of Hialeah and signed by the Mayor of the City of Hialeah.

PASSED and ADOPTED this 22nd day of September, 1987.

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ORDINANCE NO. 87-72

ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, PROHIBITING THE SLAUGHTERING OF ANIMALS UPON ANY PREMISES IN THE CITY OF HIALEAH, FLORIDA, EXCEPT THOSE PREMISES PROPERLY ZONED AS A SLAUGHTER HOUSE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, PROVIDING PENALTY FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Hialeah, Florida, has determined that the slaughtering of animals on the premises other than those properly zoned as a slaughter house, is contrary to the public health, safety and welfare of the citizens of Hialeah, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

Section 1. For the purpose of this Ordinance, the word slaughter shall mean: the killing of animals for food.

Section 2. For the purpose of this Ordinance, the word animal shall mean: any living dumb creature.

Section 3. It shall be unlawful for any person, persons, corporations or associations to slaughter any animal on any premises in the City of Hialeah, Florida, except those properly zoned as a slaughter house, and meeting all the health, safety and sanitation codes prescribed by the City for the operation of a slaughter house.

Section 4. All societies or associations for the prevention of cruelty to animals organized under the laws of the State of Florida, seeking to register with the City of Hialeah for purposes of investigating and assisting in the prosecution of violations and provisions of this Ordinance, shall apply to the City Council for authorization to so register and shall be registered with the Office of the Mayor of the City of Hialeah, Florida, following approval by the City Council at a public hearing in accordance with rules and regulations (i.e., criteria) established by the City Council by resolution, and shall thereafter, be empowered to assist in the prosecution of any violations of this Ordinance.

Section 5. Any society or association for the prevention of cruelty to animals registered with the Mayor of the City of Hialeah, Florida, in accordance with the provisions of Section 4 hereinabove, may appoint agents for the purposes of investigating and assisting in the prosecution of violations and provisions of this Ordinance, or any other laws of the City of Hialeah, Florida, for the purpose of protecting animals and preventing any act prohibited hereunder.

Section 6. This Ordinance shall not apply to any person, group, or organization that slaughters, or processes for sale, small numbers of hogs and/or cattle per week in accordance with an exemption provided by state law.

Section 7. Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 8. Penalties.

Any person, firm or corporation convicted of violating the provisions of this ordinance shall be punished by a fine, not exceeding $500.00, or by a jail sentence, not exceeding sixty (60) days, or both, in the discretion of the Court.

Section 9. Inclusion in Code.

The provisions of this Ordinance shall be included and incorporated in the Code of the City of Hialeah, as an addition or amendment thereto, and the sections of this Ordinance shall be re-numbered to conform to the uniform numbering system of the Code.

Section 10. Severability Clause.

If any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not effect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 11. Effective Date.

This Ordinance shall become effective when passed by the City Council of the City of Hialeah and signed by the Mayor of the City of Hialeah.

PASSED and ADOPTED this 22nd day of September, 1987.

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Hialeah City Code

Sec. 32-5
Zoning Changes and Land Use Plan Amendments

(a) **Procedures for Amendments to Future Land Use Plan.** From and after the date of the adoption of this section, future land use plan amendments shall be considered only on a twice annual basis in accordance with the following procedural calendar and regulations:

(1) Property owners or their authorized representatives, who possess written authorization, shall be the only eligible applicants for future land use plan amendments other than the city itself, through its planning division.

(2) During the first week of November and May of each year the city shall cause to be published, a block ad notice of its intention to accept applications for amendments to the future land

use plan element of the city's comprehensive plan.

(3) Applications shall be received by the City from January 1 through January 31 for the November cycle and from July 1 through July 31 for the May cycle in such form and in such numbers as determined by the planning division and as made available to the applicants at the time of the city's publication of its notice of intention to accept applications.

(4) Planning division staff shall review all submitted applications for future land use plan amendments during February and March for the November cycle and during August and September for the May cycle and shall prepare a comprehensive written recommendation with respect to each application, including any initiated by the city itself.

(5) On the first Wednesday of April for the November cycle and the first Wednesday of October for the May cycle the planning and zoning board shall hold a public hearing to consider applications for amendments to the future land use plan and shall upon conclusion of the public hearing make a recommendation to the city council with respect to each application.

(6) On the first Tuesday of May for the November cycle and the third Tuesday of November for the May cycle the city council shall hold a public hearing to consider the recommendations

of the planning and zoning board with respect to applications for amendments to the future land use plan and shall, upon conclusion of the public hearing, adopt, by a 5/7ths vote of the council, a resolution adopting those proposed amendments to the future land use plan that it considers to be in the best interest of the residents property owners and the citizens of the City of Hialeah.

(7) Upon adoption of the council resolution, the proposed amendments to the future land use plan shall be forwarded to the appropriate county regional and state agencies for review and comment and shall thereafter be adopted in accordance with the provisions of Florida Statutes, Section 163.3184.

(8) During the first May review and amendment process (1987) the following deviation in the normal schedule shall apply.

8.1. Notification of intention to accept applications: June.

(9) An applicant for a land use amendment, prior to his/her application being accepted, shall post, on his property, at his expense, a sign notifying the public of his intent to seek a land use amendment. Said sign shall be posted in the same manner as that provided for zoning amendments, governed by code section 32-5(c)(1).

(10) An applicant for a land use amendment shall, at the applicant's expense, prepare for and provide to the city a radius map and a property ownership list in the same form as that required for a zoning change; as governed by Chapter section 118(a) and Code section 32-5(c)(3).

(11) Property owners within a three hundred seventy-five foot radius of property for which land use plan is sought to be amended shall be notified of such amendment application, by mail, in addition to any statutorily required notice. The applicant shall bear the costs of notification to all the property owners within said three hundred seventy-five foot radius.

(b) **Zoning to conform to land use.**

(1) Within one hundred twenty (120) days of the effective date of this section, planning staff shall, as intended by Florida Statutes, Section 163.3201, proceed to initiate rezoning of all properties in the city that are presently inconsistent with the future land use plan, to make it consistent with the future land use plan.

(2) Within ninety (90) days of the adoption of an amendment to the future land use plan, the applicant for each such amendment shall submit an application to rezone the subject property consistent with the future land use plan. If the applicant fails to proceed to apply to rezone said property, then the city may, on its own initiation proceed with the rezoning application.

(c) **Applications for zoning changes, variances, and board of adjustment actions not inconsistent with the future land use plan.**

(1) An application for a zoning change and/or variance not inconsistent with the future land use plan will not be processed until the applicant has posted a sign in a conspicuous place on any street abutting the property for which the zoning change and/or variance is sought. The city shall supply such sign or signs which shall be a minimum of fourteen (14) inches by twenty-two (22) inches in size. The cost of such sign and/or signs is to be paid for by the applicant. Said applicant shall sign an affidavit setting forth that said sign or signs have been posted on the property as required by this subsection before the application for a zoning change and/or variance shall be processed.

(2) All relevant portions of the Charter of the City of Hialeah shall continue to govern applications for zoning changes and/or variances that are not inconsistent with the future land use plan.

(3) All applications, signature petitions and radius maps prepared for any zoning changes or variances shall bear the signature of the preparer of such radius maps, applications and signature petitions and shall further contain an affirmation as to the authenticity/accuracy of the signatures, legal descriptions, and other information contained therein. Radius maps under this provision shall be prepared by a

registered land surveyor or other individual with a state regulated seal.

(4) The application for a hearing before the board of adjustment shall be accompanied by a survey by a registered land surveyor no more than six (6) months prior to the date of the application and certified by the applicant to be correct.

(d) Fees.

(1) Each applicant for an amendment to the future land use plan shall pay to the City of Hialeah the sum of two hundred ($200.00) for each one-fifth acre of each parcel of land (up to a maximum of five hundred dollars ($500.00)) for which an amendment to the future land use plan is sought. For purposes of this paragraph, the term parcel shall be deemed to mean "a property or contiguous properties all under the same ownership and for which the same amendment is sought."

(2) Every person applying for change of zoning, which change is consistent with the land use plan, shall pay the sum of two hundred dollars ($200.00) upon making application for such rezoning with the planning and zoning department to defray the cost thereof. This fee also applies to applications for variance permits.

(3) The fee charge for a board of adjustment hearing shall be the sum of one hundred dollars ($100.00).

(4) The fees in paragraphs (2) and (3) above shall be tripled if a building addition or alteration has been commenced without a building permit and/or prior to the approval of the applied for zoning change, variance, or adjustment, if such zoning change, variance or adjustment is necessary in order to legally permit said building addition or alteration.

(5) Any one hundred (100) per cent service-connected disabled veteran, upon proof of such disability shall receive a fifty (50) per cent reduction in land use, zoning and board of adjustment fees for an application filed on said disabled veteran's homestead, providing said veteran has owned said homestead property according to the public records of Dade County, Florida, for a period of at least two (2) years prior to the date of the application for said land use [amendment], zoning [change] and/or board of adjustment [hearing].

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Chapter 828.12, Florida Statutes

Cruelty to Animals

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily or cruelly beats, mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, is guilty of a misdemeanor of the first

degree, punishable as provided in s. 775.082 or by a fine of not more than $5,000, or both.

(2) A person who tortures any animal with intent to inflict intense pain, serious physical injury, or death upon the animal is guilty of a felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than $10,000, or both.